

Q&A

Courts in the Information Age Conversation With Alan Slater



Alan Slater,
Executive Officer,
Superior Court of
Orange County

Alan Slater has worked in the Superior Court of Orange County's executive office for the past 30 years. From 1972 to 1980, he served as the court's Assistant Executive Officer; he was appointed its Executive Officer in 1981.

For the past three decades, he has helped lead his court's technological advances and, most recently, has acquired an in-depth knowledge of the challenges of electronic filing and electronic access.

Mr. Slater has also been a leader in the area of court technology and administration outside his own court. He has been an advisory member of the Judicial Council since September 2000, is chair of its Court Executives Advisory Committee, and is a former member of the council's Court Technology Advisory Committee. For many years he served as co-chair of the Joint Technology Committee of the Conference of State Court Administrators and the National Association for Court Management, and he remains an active member of that committee. In addition, in October 2001, he served on a panel of state and national court technology experts at the National Conference of Metropolitan Courts.

Recently Court News spoke with Mr. Slater about the issues of e-filing and electronic access to court records.

In December the council adopted standards developed by the Court Technology Advisory Committee concerning electronic access to court records. What impact will these new rules have on the courts?

I do not think there will be much of a burden on the courts because the rules recognize that

cess. From an administrative viewpoint, that is critical because it will allow court managers and technology staff to design systems to work within the rules to provide increased public access. For example, if a court wants to encourage electronic filing and make documents in criminal or family law cases available remotely to the parties and their attorneys (which is permitted by the rules), the system's infrastructure must be built with the proper security to permit exclusive access to the documents.

How would you rate the progress of new technologies as they pertain to e-filing and Internet access to court records?

I think we still have a long way to go. We are behind a lot of other industries and government services in the ability to create, receive, serve, exchange, and provide simplified Web access to electronic documents. There is a lot of investment in new technology that will be needed and a lot of progress yet to make. Lawyers create electronic documents every day and then must print them out and (at a significant cost) bring them down or mail them to the courthouse instead of just hitting the "send" button to transmit them electronically. However, electronic transmission of documents or, recently, the posting of electronic documents for filing, service, and access on the Web is not only technologically feasible but is quickly becoming readily available. However, I think most California trial courts are still a significant distance away from being able to receive those electronic documents and integrate them seamlessly into the court's case and document management systems.

What effects have new technologies had on your court?

We have done experimentation with document management and imaging systems. We also had an e-filing pilot project for two years during which our District Attorney's Family Support Program filed approximately 30,000 new cases electronically with the court. Unfortunately, changes in technology and the emergence of the World Wide Web made our "dial-in" e-filing program obsolete and caused it

to cease operation. We are still trying to get e-filing back into Family Support calendar operations.

However, we have continued to develop Web access to components of our case management systems and recently implemented the ability to pay traffic tickets and sign up and

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pay for traffic school on the Web. We have also developed, in collaboration with the Legal Aid Society of Orange County, an exciting new system of legal services and self-help kiosks to assist self-represented litigants, called I-CAN. I-CAN can assist litigants in three languages in completing properly formatted Judicial Council forms and pleadings to be filed with the court. The I-CAN system began with forms and instructions for child support and domestic violence cases and will soon be available for small claims, unlawful detainer, and some probate matters, such as petitions for change of name.

How do California's courts compare to other states in terms of e-filing and electronic access to court records?

I think our courts are struggling with the same issues in implementing e-filing and electronic access technologies as the courts in other states. There is no completely integrated, "off-the-shelf" solution out there to opt into. A few pilot projects in California are working to create Web-based "smart documents" to file electronically, such as the small claims filing project in the Superior Court of Sacramento County.

It is interesting to note that approximately 85 percent of the documents that we file are Judicial Council forms. So, I think we must begin to focus on making those forms intelligent, so that when the litigants and/or attorneys complete them electronically and courts receive them electronically, all the data will be able to be assimilated into the case management system.

While there are some Judicial Council forms provided by private software companies that can be filled out electronically, I don't believe that benefits most courts. I have been very reluctant to receive those documents by e-mail or fax for filing, because they would still have to be

printed out in the clerks' offices and then processed manually. A fully integrated electronic filing system is needed that will allow the court to receive the electronic documents, extract, and load the appropriate data elements from them into the case management system. Then the system would need to capture the document as a secure electronic original document while filing it in and providing access through an electronic case file. Then the system would need to generate the entire appropriate document processing activities such as indexing, setting calendars, creating notices, etc. Otherwise documents still must be processed manually as if origi-

nated as a paper document and filed over the counter.

Therefore, I think it is important for the Administrative Office of the Courts and Judicial Council to continue to encourage experimentation and work on developing standards for e-filing and electronic access. We are going to learn what works and what does not work. We should not be afraid of failing because this is tough stuff. If it were easy, everyone would be doing it already. We have to accept that we will have many hurdles to overcome and that we may never be done, because technology constantly progresses and changes. However, I believe this process is critical to the evolution of how we are going to operate as a court system in California in the future.

What does the future hold for e-filing and electronic access to court records?

There are still significant problems to overcome. There are a number of vendors offering competent case management systems. There are other vendors offering front-end electronic filing services that will create electronic documents in various formats and transmit them to a court. There are also those vendors and some courts that are trying to create "middleware" to bridge the gaps and interfaces between these various components. However, no vendor or collaboration of vendors that I am aware of has been able to create a true "end-to-end" electronic filing system. I think eventually we will see the seamless integration of these technologies. However, I think it is going to take some time to develop and will require the adoption of electronic filing rules and standards by the judicial branch in each state in order to facilitate and encourage the necessary public and private investment required to achieve this formidable goal. ■

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providing electronic access is subject to funding constraints. These rules will promote increased public access, via the Web, to a court's indexes, registers of actions, and calendars. By encouraging these technological applications within established parameters, the rules may even reduce a court's burden because now we have to hire and train staff to provide public access at the courthouse.

What these rules do is define what information can and cannot be made available to the public through remote Web ac-

Andrade: Three-Strikes Law Unconstitutional as Applied

Since the enactment of the three-strikes law in 1994, more than 25 published appellate opinions have discussed the application of the Eighth Amendment to sentences imposed by trial courts; none found the law to be cruel and unusual punishment either on its face or as applied. The federal Court of Appeals for the Ninth Circuit, in a 2-1 decision in *Andrade v. Attorney General of California* ((2001) 270 F.3d 743), determined that the law constituted cruel and unusual punishment as applied to the defendant.

The defendant was convicted of two separate acts of shoplifting: he stole a total of nine videotapes valued at \$153.54 from two Kmart stores. Because the defendant had previously been convicted of a theft-related offense, the district attorney charged the defendant with two felony counts of "petty theft with a prior" under Penal Code section 666. Because he had suffered three prior residential burglary convictions, the defendant was sentenced on each theft count to 25 years to life, consecutive, for a total term of 50 years to life.

The defendant's criminal record was not extraordinary. He was convicted in 1982 of petty theft. In 1983 he picked up his three strikes: three residential burglaries prosecuted in a single proceeding. In 1988 the defendant was convicted in federal court of felony transportation of marijuana. In 1990 he was convicted of another petty theft and felony transportation of marijuana. Finally, in 1991 he received a federal parole violation for escaping from prison. At the time of his current offenses, therefore, the defendant had suffered five felony and two misdemeanor convictions, and one parole violation.

Andrade concluded that the constitutionality of life sentences for nonviolent recidivists is controlled by three decisions of the U.S. Supreme Court: *Rummel v. Estelle* (1980) 445 U.S. 263; *Solem v. Helm* (1983) 463 U.S. 277; and *Harmelin v. Michigan* (1991) 501 U.S. 957. The test for constitutionality was articulated by Justice Kennedy in *Harmelin*: The "Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are 'grossly disproportionate' to the crime." (*Id.* at p. 1001.) Application of the test calls for the analysis of three factors: a comparison of the defendant's punishment to his crime to determine if it is disproportionate, a comparison of the defendant's punishment with punishments for other crimes in California, and, finally, a comparison of the defendant's

punishment with punishments for similar crimes committed in other states.

Andrade found the defendant's sentence excessively harsh when compared to the gravity of the offense. Under California law, the defendant would not be eligible for parole for 50 years. Since the defendant is already age 37, his parole eligibility would extend beyond his statistical life expectancy. Acknowledging that states are permitted to punish crimes committed by recidivists more harshly than those of first-time offenders, the Ninth Circuit nevertheless determined that the defendant was being punished for conduct that normally is a misdemeanor. Because of the unique aspects of California law, defendant's past record was "double counted": first to elevate the core crime to a felony, then again to impose a "strike" sentence. The defendant's life sentence without any realistic possibility of parole could not be supported by a record of nonviolent offenses and three residential burglaries prosecuted in a single proceeding more than a decade earlier.

The court also found the defendant's sentence disproportionate when compared to sentences for other California crimes. The court found the 50 years to life sentence is exceeded

only by that for first-degree murder and a few particularly violent felonies. The punishment for most violent crimes is substantially less. Even when compared to other three-strikes sentences, the defendant's sentence was found unusual. The court found no published California opinion upholding a 50 years to life sentence for a nonviolent recidivist under the three-strikes law.

Finally, the court observed that between 1993 and 1995, 25 to 40 states enacted laws similar to California's three-strikes law. The state Attorney General argued that four would have permitted punishment similar to the defendant's: Rhode Island, West Virginia, Texas, and Louisiana. After a further review of these laws, however, the court concluded that, with the possible exception of Louisiana, the defendant could not have received the same punishment in the other states.

Andrade concluded, "[T]he Eighth Amendment does not permit the application of a law which results in a sentence grossly disproportionate to the crime. *Andrade*'s sentence of life in prison with no possibility of parole for 50 years is grossly disproportionate to his two misdemeanor thefts of nine videotapes, even when we consider his history of nonviolent offenses." (*Id.* at p. 767.)

Chief Justice Names Arbitrator Ethics Panel

Pursuant to recently enacted legislation, Chief Justice Ronald M. George in November appointed an 18-member Judicial Council blue ribbon panel to assist in the development of ethics standards for private contractual arbitrators in California. Senate Bill 475, cosponsored by the Judicial Council, the Governor, and Senator Martha Escutia, chair of the Senate Judiciary Committee, requires the Judicial Council to adopt these standards by July 1, 2002.

"The development of ethics standards for private arbitrators represents a great opportunity to improve the administration of justice in California," said Chief Justice George. "I welcome the participation of this panel in the development of those standards."

"Because privately contracted neutrals are not licensed as arbitrators, there is no regulatory scheme enforceable by either the state or professional associations," says University of San Francisco School of Law Professor Jay Folberg, chair of the new panel. "The new standards will not create a special agency to oversee arbitrators, but they will provide ethical guidelines concerning issues

such as disclosures of conflicts of interest. Failure to adhere to the ethical standards to be adopted by the Judicial Council could result in disqualifying or possibly vacating the arbitration award."

The panel is charged with reviewing and providing input into draft ethics standards developed by the Administrative Office of the Courts (AOC). After revising the draft standards to reflect the panel's input, AOC staff plan to circulate the proposed guidelines for public comment during January and February and to hold two public forums—one on February 7 in Los Angeles, the other on February 8 in San Francisco.

● To view the draft ethics standards during the public comment period, visit the California Courts Web site at www.courtinfo.ca.gov/invitationstocomment. To reserve a time to speak at the public forums, contact Tracy Tognetti, AOC's Office of the General Counsel, 415-865-7964; e-mail: tracy.tognetti@jud.ca.gov. For more information, contact Heather Anderson, AOC's Office of the General Counsel, 415-865-7691; e-mail: heather.anderson@jud.ca.gov. ■

The legal effect of *Andrade* on California courts is not entirely clear. Some authorities suggest that opinions of intermediate federal appellate courts on federal questions are binding on the states. (See, e.g., *Keiper v. Northwestern Pacific R. Co.* (1955) 134 Cal.App.2d 702, 706; *Chino v. Superior Court* (1967) 255 Cal.App.2d 747, 757.) The weight of authority, however, holds that except for decisions of the U.S. Supreme Court, federal case law is entitled to great weight but is not binding on California state courts. (*People v. Bradley* (1969) 1 Cal.3d 80, 86; *Rohr Aircraft Corp. v. San Diego* (1959) 51 Cal.2d 759, 764; *Peo-*



Judge J. Richard Couzens, Superior Court of Placer County

Judge Couzens is a former member of the Judicial Council and past chair of its Criminal Law Advisory Committee.



ple v. Estrada (1965) 234 Cal.App.2d 136, 145; *People v. Clark* (1969) 2 Cal.App.3d 510, 519.) Even though federal decisions may not be binding, California trial courts sentencing defendants in situations similar to *Andrade* may wish to factor in the prospect that a defendant now may be able to go "across the street" to obtain relief in another venue. ■

Blue Ribbon Panel of Experts on Judicial Arbitrator Ethics

Professor Jay Folberg,
Chair
University of San Francisco
School of Law

William B. Baker
Arbitrator/Mediator,
Calistoga

Kenneth C. Bryant
Attorney, ADR Neutral,
San Jose

Professor Erwin Chemerinsky
University of Southern
California Law School,
Los Angeles

Richard Chernick
Vice President and
Managing Director,
JAMS Arbitration
Practice, Los Angeles

Judge Julie M. Conger
Superior Court of
Alameda County

Michael A. Futterman
Attorney at Law, Dodd,
Futterman & Dupree
LLP, San Francisco

Barry Goode
Secretary of Legal Affairs,
Office of Governor Gray
Davis, Sacramento

Gail Hillebrand
Senior Attorney,
Consumers Union, San
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Robert A. Holtzman
Attorney at Law, Loeb &
Loeb, LLP, Los Angeles

Judge Ellen Sickles James
(Ret.)
JAMS Arbitration Practice,
Walnut Creek

John Kagel
Attorney, ADR Neutral,
Palo Alto

Professor L. Randolph Lowry
Director, Straus Institute
for Dispute Resolution
and Professor of Law,
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James R. Madison
Attorney at Law,
Mediator/Arbitrator,
Menlo Park

Michael Roster
Executive Vice-President
and General Counsel,
Golden West Financial
Corporation, Oakland

Judge David Rothman
(Ret.)
Los Angeles

Justice Miriam A. Vogel
Court of Appeal, Second
Appellate District,
Division One, Los
Angeles

Gene Wong
Chief Counsel, Senate
Judiciary Committee,
Sacramento



Chief Justice Ronald M. George congratulates Supervising Supreme Court Marshal Harry Kinney on one of the many awards he has received at the World Police and Fire Games. Mr. Kinney is retiring from his post after 14 years with the court.

Supreme Security

This spring the California Supreme Court bids farewell to one of its most visible staff leaders. It is not one of the court's attorneys or clerks, but Supervising Supreme Court Marshal Harry Kinney.

After 14 years as a Supreme Court marshal, Mr. Kinney—a familiar presence in and out of the courtroom—is retiring from the court in March and is expected to accept a position with the Sheriff's Department in Contra Costa County. He began his service to the court in 1987, when it was led by then-Chief Justice Malcolm M. Lucas, and in 1993 was elevated to supervising marshal.

"The court, and I personally, will greatly miss the exemplary services of Harry Kinney," says Chief Justice Ronald M. George. "For many years he has called our court sessions to order, provided security and assistance to the justices of the court, and accompanied me on my visits to the courts."

As supervising marshal of the California Supreme Court, one of Mr. Kinney's duties is to coordinate and provide

off-site protection for the Chief Justice during court business and public appearances outside the court. In this capacity, he scouts event locations and works with local law enforcement to secure those areas.

"One of the most memorable experiences was traveling with Chief Justice George when he pledged to personally visit every county in the state," says Mr. Kinney, recalling the Chief Justice's statewide tour in 1996, his first year as Chief Justice. "The Chief referred to it as 'fun on the road.' He was able to talk face to face with judges from every superior court. And I was able to speak with deputies from all over the state who all had similar problems with court security."

Besides being assigned to protect the Chief Justice, Mr. Kinney coordinates the day-to-day court security efforts with the California Highway Patrol Court Services Unit and the contract security personnel assigned to the Supreme Court. Mr. Kinney says that one responsibility most people are not aware of is

his duty to record and archive the high court's oral argument transcripts.

Mr. Kinney began his 32-year career in law enforcement in 1969 as a deputy sheriff for San Mateo County. He has also served as a deputy sheriff for El Dorado County, as a police officer in East Palo Alto, and as a supervising special deputy for the U.S. Marshals Service. During his years in public service, he has received training at the Federal Law Enforcement Training Center in protective security operations and has become a distinguished weapons expert. Representing the California Supreme Court, Mr. Kinney has won more than 25 awards for archery at the biannual World Police and Fire Games and the annual California Police and Fire Games, competitions that include events in track and field, marksmanship, narcotics searches, and watercraft operations.

"One of the interesting things about my job has been that the makeup of the court and its security needs are always changing," added Mr. Kinney, reflecting on his tenure on and impending departure from the court. "I guess it will be changing again." ■

New Appointments to Council Committees

Chief Justice Ronald M. George recently appointed 70 judges, court administrators, attorneys, and others to fill vacancies on 12 of the Judicial Council's 14 specialized advisory committees.

Members of the advisory committees volunteer their time and expertise to study issues affecting judicial administration. Vacancies are filled annually through a nomination and selection process designed to attract qualified applicants from throughout the state's legal system. Diversity of experience, diversity of background, and diversity of geography are among the guiding criteria for selection of members.

The appointments took effect November 1, 2001, and are generally for three-year terms. Following are the newly appointed committee members and the new and reappointed committee chairs and vice-chairs.

Access and Fairness Advisory Committee

Judge Ken M. Kawaichi, Superior Court of Alameda County, appointed chair

Judge Steven A. Brick, Superior Court of Alameda County

Judge John J. Conway, Superior Court of San Francisco County

Judge John L. Davidson, Superior Court of San Diego County

Judge Margaret Johnson, Superior Court of Santa Clara County

Justice James R. Lambden, Court of Appeal, First Appellate District

Ms. Raquelle Myers, National Indian Justice Center, Sonoma

Ms. Nancy Piano, Superior Court of Santa Clara County

Judge Laurie Zelon, Superior Court of Los Angeles County

Dr. Brian Borys, Superior Court of Los Angeles County (advisory member)

Appellate Advisory Committee

Justice Joyce L. Kennard, Associate Justice of the California Supreme Court, reappointed chair

Mr. George Bond, Central California Appellate Program

Mr. Kent Richland, Greines, Martin, Stein & Richland LLP, Los Angeles

Justice William D. Stein, Court of Appeal, First Appellate District

Civil and Small Claims Advisory Committee

Judge Douglas P. Miller, Superior Court of Riverside County, reappointed chair

Ms. Catherine Barrad, Sidley Austin Brown & Wood, Los Angeles

Mr. Mark Chavez, Chavez & Gertler, Marin

Ms. Francine Collier, Superior Court of Santa Clara County

Ms. Patricia Daehnke, Bonne, Bridges, Mueller, O'Keefe & Nichols, Los Angeles

Judge Joe S. Gray, Superior Court of Sacramento County

Judge C. Robert Jameson, Superior Court of Orange County

Ms. Mary Skinner, Superior Court of Los Angeles County

Collaborative Justice Courts Advisory Committee

Judge Darrell W. Stevens, Superior Court of Butte County, reappointed chair

Ms. Patricia Aguiar, California Department of Social Services, Sacramento

Mr. Kenneth Blackshear, United Indian Health Services, Del Norte County

Mr. Calvin Remington, Ventura County Probation Agency

Court Executives Advisory Committee

Mr. Alan Slater, Executive Officer, Superior Court of Orange County, appointed chair

Mr. Stephen Bouch, Executive Officer, Superior Court of Napa County

Ms. Lyla Corfman, Executive Officer, Superior Court of Imperial County

Ms. Mary Beth Todd, Executive Officer, Superior Court of Calaveras County

Ms. Tania Ugrin-Capobianco, Executive Officer, Superior Court of Mendocino County

Court Interpreters Advisory Panel

Justice Eileen C. Moore, Court of Appeal, Fourth Appellate District, appointed chair

Ms. Judy Arasé, Court Interpreter, Los Angeles County

Mr. José O. Guillén, Executive Officer, Superior Court of Riverside County

Mr. Hiram Torres, Court Interpreter, Alameda/Contra Costa/Napa/San Francisco Counties

Judge Dan Thomas Oki, Superior Court of Los Angeles County (advisory member)

Court Technology Advisory Committee

Justice Joanne C. Parrilli, Court of Appeal, First Appellate District, appointed chair

Ms. Tamara L. Beard, Executive Officer, Superior Court of Fresno County

Professor Robert Berring, Jr., University of California at Berkeley, Boalt Hall School of Law

Judge Larry L. Dier, Superior Court of Modoc County

Mr. Joseph A. Lane, Clerk/Administrator, Court of Appeal, Second Appellate District

Mr. Ken Torre, Executive Officer, Superior Court of Contra Costa County

Judge A. Rex Victor, Superior Court of San Bernardino County

Criminal Law Advisory Committee

Justice Steven Z. Perren, Court of Appeal, Second Appellate District, appointed chair

Judge James R. Brandlin, Superior Court of Los Angeles County

Mr. Dane Gillette, Office of the Attorney General, San Francisco

Justice Thomas E. Hollenhorst, Court of Appeal, Fourth Appellate District

Mr. Jay Kohorn, California Appellate Project, Los Angeles

Judge William J. Murray, Jr., Superior Court of San Joaquin County

Judge J. Michael Welch, Superior Court of San Bernardino County

Judge David S. Wesley, Superior Court of Los Angeles County

Family and Juvenile Law Advisory Committee

Judge Mary Ann Grilli, Superior Court of Santa Clara County, reappointed co-chair

Judge Michael Nash, Superior Court of Los Angeles County, reappointed co-chair

Commissioner Sue Alexander, Superior Court of Alameda County

Ms. Patti Chavez-Fallon, Superior Court of San Diego County

Mr. L. Michael Clark, Office of the County Counsel, Santa Clara County

Ms. Ana España, Office of the Public Defender, San Diego County

Ms. Polly Franson, Court Appointed Special Advocate, Fresno County

Judge Susan D. Huguenor, Superior Court of San Diego County

Mr. Kurt Kumli, Office of the District Attorney, Santa Clara County

Judge James M. Mize, Superior Court of Sacramento County

Ms. Diane Wasznicky, Bartholomew, Wasznicky & Molinaro LLP, Sacramento

Governing Committee of the Center for Judicial Education and Research

Judge B. Tam Nomoto Schumann, Superior Court of Orange County, appointed chair

Judge George J. Abdallah, Jr., Superior Court of San Joaquin County, appointed vice-chair

Ms. Barbara Fox, Superior Court of Alameda County

Judge Charles W. McCoy, Jr., Superior Court of Los Angeles County

Ms. Susan Myers, Superior Court of Santa Clara County

Justice Mark B. Simons, Court of Appeal, First Appellate District

Probate and Mental Health Advisory Committee

Judge Stephen D. Cunnison, Superior Court of Riverside County, appointed chair

Ms. Nancy Eberhardt, Superior Court of San Diego County

Ms. Linda Martinez, Superior Court of Orange County

Mr. Matthew (Sandy) Rae, Jr., Darling, Hall & Rae, Los Angeles

Mr. Peter Stern, Attorney at Law, Santa Clara

Traffic Advisory Committee

Judge Glenn A. Mahler, Superior Court of Orange County, reappointed chair

Judge Dale Susan Fischer, Superior Court of Los Angeles County

Ms. Michele Meadows, California Office of Traffic Safety

Judge John H. Tiernan, Superior Court of Colusa County

For a complete listing of all advisory committees and their members, visit the California Courts Web site at www.courtinfo.ca.gov/courtadmin/jc/advisorycommittees.htm or request a copy from Secretariat and Conference Services at the Administrative Office of the Courts, jcservices@courtinfo.ca.gov.